

NOT FOR PUBLICATION

APR 19 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERTO RAMOS-RODRIGUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-76457

Agency No. A79-796-782

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Alberto Ramos-Rodriguez, a native and citizen of El Salvador, petitions for
review of the Board of Immigration Appeals' ("BIA") decision affirming an

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's order denying his motion to reopen removal proceedings after he was ordered removed in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), and we grant the petition for review.

The BIA abused its discretion in denying Ramos-Rodriguez's motion to reopen because his excuse that he failed to appear at the hearing due to a flat tire is an "exceptional circumstances" beyond his control. *See* 8 U.S.C. § 1229a(e)(1). Further, although Ramos-Rodriguez's arrived late to his hearing, he did appear at the immigration office during normal business hours.

We grant the petition for review and remand to the BIA to remand to the IJ to consider the merits of Ramos-Rodriguez's asylum, withholding of removal and Convention Against Torture claim.

PETITION FOR REVIEW GRANTED; REMANDED.